



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-RC

MAR 26 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David M. Smith
BNSF Railway Company
800 North Last Chance Gulch, Suite 101
Helena, MT 59601

Re: Request For Information Pursuant to Section 104(e) of CERCLA
Libby Asbestos Site, Libby, Montana SSID #08-BC

Dear Mr. Smith:

This letter seeks your cooperation in providing information, samples and documents relating to the Libby Asbestos Site located in Libby, Montana (Site). The United States Environmental Protection Agency (EPA) is investigating the identification, nature, and quantity of materials that have been generated, treated, stored or disposed of at, or transported to, the Site; the nature or extent of the release of a hazardous substance, pollutant or contaminant at the Site.

Pursuant to the authority of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604, as amended, you are hereby requested to respond to the Request for Information, Samples, and Sample Documentation (Information Request) set forth in Enclosure 1, attached hereto. The EPA is writing this letter to you because we know that you performed sampling within the rail corridor at the Site. We are requesting that you deliver to us the samples, as well as all pertinent information and documentation relating to these samples. The EPA is requesting the actual samples for reanalysis at a higher level of sensitivity.

Please respond to this Information Request within thirty (30) days of receipt of this letter. Failure to respond fully and truthfully or to adequately justify your failure to respond can result in an enforcement action by the EPA pursuant to section 104(e) of CERCLA and the imposition of penalties of up to \$37,500 per day of non-compliance. Please be further advised that provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.

The Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 1001.

Your response to this request must be accompanied by a notarized certificate that is signed and dated by the person who is authorized by you to respond to this request. The notarized certificate must state that the response submitted to the EPA is complete and contains all documents, information, and samples

responsive to this request that are known to you following a complete and thorough review of all information and sources available to you. A suggested format for the notarized certificate is included with this request as Enclosure 2.

Your written response to this Information Request should be mailed to:

U.S. Environmental Protection Agency
Region 8
Attn: Sharon Abendschan
Technical Enforcement Program, 8ENF-RC
1595 Wynkoop Street
Denver, Colorado 80202-1129

The requested samples and associated documentation should be submitted to:


Don Goodrich, Environmental Scientist
Contact Information: Email: Goodrich.donald@epa.gov
Phone Number: (303)-312-6687

Please contact Mr. Goodrich to coordinate the chain of custody procedures and the secure transfer of samples and associated documentation.

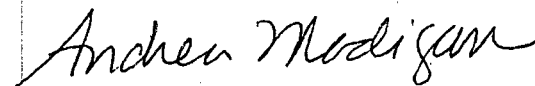
The EPA strongly encourages you to give this matter your immediate attention and to respond to this Information Request within the time specified above. If you have any questions relating to this Information Request, please contact Lorraine Ross, EPA Enforcement Attorney, at (303) 312-6888, or Sharon Abendschan, EPA Enforcement Specialist, at (303) 312-6957. Any technical questions should be addressed to Dania Zinner at (303) 312-7122.

Thank you for your cooperation in this matter.

Sincerely,



Kelcey Land, Director
RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



Andrea Madigan
Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Dava Kaitala, Senior General Attorney, BNSF Railway Company
Lorraine Ross, 8ENF-L
Dania Zinner, 8EPR-SR
Rebecca Thomas, 8EPR-SR
Don Goodrich, 8EPR-S
Sharon Abendschan, 8ENF-RC
Dianna Lim, 8EPR-PS



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Paper

ENCLOSURE 1

INSTRUCTIONS FOR INFORMATION REQUEST TO BNSF RAILWAY LIBBY ASBESTOS SITE, LIBBY, LINCOLN COUNTY, MONTANA SSID 08-BC

1. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this Information Request.
2. Precede each answer with the number of the Question to which it corresponds.
3. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to the EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the truth, you must notify the EPA of this fact as soon as possible and provide the EPA with a corrected response.
4. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it corresponds.
5. The information requested herein must be provided even though the Respondent may contend that it includes possibly confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. 9604(e)(7)(E) and F, section 3007(b) of RCRA, 42 U.S.C. 6927(b), and 40 C.F.R. 2.203(b), by attaching to such information at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by the EPA only to the extent, and only by means of the procedures set forth in 40 C.F.R. Part 2, 41 Fed. Reg. 36,902 (1976) (amended at 43 Fed. Reg. 40,000 (1978), and 50 Fed. Reg. 51,661 (1985)). If no such claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to you. You should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim.
6. Any documents requested that previously have been submitted to the EPA should be identified in each narrative response including the name of the document and the date it was submitted to the EPA. These documents need not be resubmitted at this time, but may be requested by the EPA in the future.

DEFINITIONS AND INFORMATION
LIBBY ASBESTOS SITE, LIBBY, LINCOLN COUNTY, MONTANA SSID 08-BC

The following definitions shall apply to the following words as they appear in this Enclosure:

1. The term "ABS sample" shall mean Activity Based Sampling (ABS) samples collected in 2008 and 2009 by the Burlington Northern and Santa Fe Railway Company (BNSF) to measure exposure to Libby Amphibole asbestos for a variety of activities along the BNSF rail corridor within the Libby Asbestos Site, including Steel Gang and Supersurfacing Gang activities.
2. The term "CERCLA" means the Comprehensive Environmental Liability Response, Compensation and Liability Act, and can be found at 42 U.S.C. section 9601, et. seq.
3. The terms "document" and "documents" shall mean any written, recorded, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control or known by you to exist, including originals, all prior drafts, and all non-identical copies.
4. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
5. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), and the substance or the subject matter.
6. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
7. The term "identify" means, with respect to samples, to set forth the type of media sampled, the number and types of samples taken, when and where taken, the laboratory where they were analyzed, and where they are currently stored.
8. The term "person" shall have the same definition as in Section 101(21) of CERCLA: an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State municipality, commission, political subdivision of a State, or any interstate body.

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, 42 U.S.C. § 9601 et seq.; or its regulations found at 40 C.F.R. Part 300, in which case the statutory or regulatory definitions shall apply.

**REQUEST FOR INFORMATION, SAMPLES, AND SAMPLE DOCUMENTATION
LIBBY ASBESTOS SITE, LIBBY, LINCOLN COUNTY, MONTANA
SSID 08-BC**

1. Identify the person(s) answering these Questions by providing their name, address, fax and telephone number.
2. Identify the person(s) that you wish to receive all further communications from the EPA related to the Property.
3. For each and every Question contained herein, identify all persons consulted in the preparation of the answer.
4. For each and every Question contained herein, identify documents consulted, examined, or referred to in the preparation of the answer or that contains information responsive to the Question and provide accurate copies of all such documents.
5. **Samples**
 - a. Identify all ABS samples taken by BNSF and/or BNSF's contractor associated with activities along the rail corridor within the Libby Asbestos Site, and provide these samples to the EPA, as described in subparagraph c, below.
 - b. In addition to the ABS samples, identify any other ambient air or personal air monitoring samples taken by BNSF and/or BNSF's contractor(s) associated with activities along the rail corridor within the Libby Asbestos Site, and provide these samples to the EPA, as described in subparagraph c, below.
 - c. To arrange for secure transfer and delivery of the samples identified in a and b above, please contact:

Don Goodrich, Environmental Scientist
Email: Goodrich.donald@epa.gov
Telephone Number: (303) 312-6687
6. Provide all field sampling documentation/reports including, but not limited to, field log books, field records, and all field sample custody documentation.
7. Provide all chain of custody documents relating to the ABS samples and air monitoring samples mentioned above.
8. Provide all sampling and shipping information and documentation.

9. Provide all laboratory analytical methods and technique documentation associated with the ABS samples including reporting limits, holding times, lab custody procedures and documents, laboratory quality assurance procedures, all laboratory documentation and records, along with data management procedures.
10. Provide BNSF's and/or BNSF's contractor's Standard Operating Procedures for all sample collection and preparation of samples.
11. Provide sampling decontamination procedures and requirements used by BNSF's and/or BNSF's contractor's laboratory.
12. Provide all sampling notes and reports provided from BNSF and/or BNSF's contractor's laboratory associated with the ABS samples.
13. Provide BNSF's and/or BNSF's contractor's laboratory documentation related to the preparation and use of equipment blank samples.
14. Provide all Quality Assurance/Quality Control documentation provided by BNSF and/or BNSF's contractor's laboratory sampling teams along with data collection analysis documentation.

NOTARIZED CERTIFICATE

I, _____, having been duly sworn and being of legal age,
hereby state:

1. I am the person authorized by BNSF Railway Company to respond to the Environmental Protection Agency's (EPA's) request for information concerning the Libby Asbestos Site located in Libby, Montana.
2. I have made a complete and thorough review of all documents, information, and sources relevant to the request.
3. I hereby certify that the attached response to EPA's request is complete and contains all information, documents and samples responsive to the request.

(Signature)

(Name)

(Title)

(SEAL)

Subscribed and sworn to me this _____ day of _____,
2013.

Notary Public

My Commission Expires _____

My address is _____

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <i>*Sandy Davis</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: David M. Smith BNSF Railway Company 800 North Last Chance Gulch, Suite 101 Helena, MT 59601		B. Received by (Printed Name) <i>Sandy Davis</i>	
		C. Date of Delivery 	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No	
		<input checked="" type="checkbox"/> Registered Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from) 7009 3410 0000 2598 9322		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-154	

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
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Postage \$	MAR 26 2013 Postmark Here <i>dd 2:30pm</i>
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
David M. Smith BNSF Railway Company 800 North Last Chance Gulch, Suite 101 <i>Helena, MT 59601</i>	
PS Form 3800, August 2006	
See Reverse for Instructions	



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Concurrence Copy

Ref: 8ENF-RC

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7009 3410 0000 2598 9322

Mr. David M. Smith
BNSF Railway Company
800 North Last Chance Gulch,
Suite 101
Helena, MT 59601

*Looks like there may be
2 spaces after periods. Press
ALT-2 to tighten that up.
- Sue*

Re: Request For Information Pursuant to Section 104(e) of CERCLA
Libby Asbestos Site, Libby, Montana SSID #08-BC

Dear Mr. Smith:

This letter seeks your cooperation in providing information, samples and documents relating to the Libby Asbestos Site located in Libby, Montana (Site). The United States Environmental Protection Agency (EPA) is investigating the identification, nature, and quantity of materials that have been generated, treated, stored or disposed of at, or transported to, the Site; the nature or extent of the release of a hazardous substance, pollutant or contaminant at the Site.

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Please respond to this Information Request within thirty (30) days of receipt of this letter. Failure to respond fully and truthfully or to adequately justify your failure to respond can result in an enforcement action by the EPA pursuant to section 104(e) of CERCLA and the imposition of penalties of up to \$37,500 per day of non-compliance. Please be further advised

*Sue Zeynard
8ENF-RC
3/16/13*

*Schwendtman
8ENF-RC
3/7/13*

*8ENF-L
Liu-Ross
3/7/13*

*ENT-2
AMM
3/20/13*

that provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.

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Region 8
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JL

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JL

because we understand BNSF took samples that we need because we need to est about why need this data

Thank you for your cooperation in this matter.

Sincerely,

Kelcey Land
Director, Technical Enforcement Program,
Office of Enforcement, Compliance
and Environmental Justice

Andrea Madigan
Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Dava Kaitala, Senior General Attorney, BNSF Railway Company
Lorraine Ross, 8ENF-L
Dania Zinner, 8EPR-SR
Rebecca Thomas, 8EPR-SR
Don Goodrich, 8EPR-S
Sharon Abendschan, 8ENF-RC
Dianna Lim, 8EPR-PS



ENCLOSURE 1

**INSTRUCTIONS FOR INFORMATION REQUEST TO BNSF RAILWAY
LIBBY ASBESTOS SITE, LIBBY, LINCOLN COUNTY, MONTANA SSID 08-BC**

1. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this Information Request.
2. Precede each answer with the number of the Question to which it corresponds.
3. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide EPA with a corrected response.
4. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it corresponds.
5. The information requested herein must be provided even though the Respondent may contend that it includes possibly confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. 9604(e)(7)(E) and F, section 3007(b) of RCRA, 42 U.S.C. 6927(b), and 40 C.F.R. 2.203(b), by attaching to such information at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only to the extent, and only by means of the procedures set forth in 40 C.F.R. Part 2, 41 Fed. Reg. 36,902 (1976) (amended at 43 Fed. Reg. 40,000 (1978), and 50 Fed. Reg. 51,861 (1985)). If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim.
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2. The term "CERCLA" means the Comprehensive Environmental Liability Response, Compensation and Liability Act, and can be found at 42 U.S.C. section 9601, et seq.
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4. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
5. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), and the substance or the subject matter.
6. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

- 8 7. The term "identify" means, with respect to samples, to set forth the term "person" shall have the same definition as in Section 101(21) of ^{the type of} CERCLA: an individual, firm, corporation, association, partnership, consortium, ^{media} joint venture, commercial entity, United States Government, State municipality, ^{sampled} commission, political subdivision of a State, or any interstate body.

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, 42 U.S.C. § 9601 et seq.; or its regulations found at 40 C.F.R. Part ^{where} 300, in which case the statutory or regulatory definitions shall apply. ^{where taken,}

the laboratory where they were analyzed, and where they are currently stored.

**REQUEST FOR INFORMATION, SAMPLES, AND SAMPLE DOCUMENTATION
LIBBY ASBESTOS SITE, LIBBY, LINCOLN COUNTY, MONTANA
SSID 08-BC**

1. Identify the person(s) answering these Questions by providing their name, address, fax and telephone number.
2. Identify the person(s) that you wish to receive all further communications from the EPA related to the Property.
3. For each and every Question contained herein, identify all persons consulted in the preparation of the answer.
4. For each and every Question contained herein, identify documents consulted, examined, or referred to in the preparation of the answer or that contains information responsive to the Question and provide accurate copies of all such documents.
5. Samples
 - a. Identify all ABS samples taken by BNSF and/or BNSF's contractor associated with activities along the rail corridor within the Libby Asbestos Site, and provide these samples to EPA, as described in subparagraph c, below.
 - b. In addition to the ABS samples, identify any other ambient air or personal air monitoring samples taken by BNSF and/or BNSF's contractor associated with activities along the rail corridor within the Libby Asbestos Site, and provide these samples to EPA, as described in subparagraph c, below.
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Don Goodrich, Environmental Scientist
Email: Goodrich.donald@epa.gov
Telephone Number: (303) 312-6687
6. Provide all field sampling documentation/reports including, but not limited to, field log books, field records, and all field sample custody documentation.
7. Provide all chain of custody documents relating to the ABS samples and air monitoring samples mentioned above.
8. Provide all sampling and shipping information and documentation.

9. Provide all laboratory analytical methods and technique documentation associated with the ABS samples including reporting limits, holding times, lab custody procedures and documents, laboratory quality assurance procedures, all laboratory documentation and records, along with data management procedures.
10. Provide BNSF's and/or BNSF's contractor's Standard Operating Procedures for sample collection and preparation of samples. (ABS only? all?)
11. Provide sampling decontamination procedures and requirements used by BNSF's ~~contracted~~ laboratory.
and/or BNSF's contractor's from and/or BNSF's contractors
12. Provide all sampling notes and reports provided by BNSF's ~~contracted~~ laboratory associated with the ABS samples.
and/or BNSF's contractor's
13. Provide BNSF's ~~contracted~~ laboratory documentation related to the preparation and use of equipment blank samples.
14. ↓ Provide all Quality Assurance/Quality Control documentation provided by BNSF's ~~contracting~~ laboratory sampling teams along with data collection analysis documentation.
and/or BNSF's contractor's

Are these questions limited to ABS sampling or did you want other sample info too?

NOTARIZED CERTIFICATE

I, _____, having been duly sworn and being of legal age,
hereby state:

1. I am the person authorized by BNSF Railway Company to respond to the Environmental Protection Agency's (EPA's) request for information concerning the Libby Asbestos Site located in Libby, Montana.
2. I have made a complete and thorough review of all documents, information, and sources relevant to the request.
3. I hereby certify that the attached response to EPA's request is complete and contains all information, documents and samples responsive to the request.

(Signature)

(Name)

(Title)

(SEAL)

Subscribed and sworn to me
this _____ day of _____, 2013.

Notary Public

My Commission Expires _____
My address is _____